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HOUSE BILL 734

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO IDENTITY THEFT; CLARIFYING CRIMINAL DEFINITION;
REQUIRING POLICE REPORTS; PROVIDING REMEDIES TO VICTIMS;
INCREASING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-16-24.1 NMSA 1978 (being Laws 2001,
Chapter 138, Section 1) is amended to read:

"30-16-24.1. THEFT OF IDENTITY.--

A. Theft of identity consists of:

(1) willfully obtaining, recording or
transferring personal identifying information of another person
without the authorization or consent of that person and with
the intent to defraud that person or another or with the intent
to sell or distribute the information to another; or

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1 (2) using personal identifying information of
2 another person or of a false or fictitious person, whether that
3 person is dead or alive, to avoid summons, arrest or
4 prosecution or to impede a criminal investigation.

5 B. As used in this section:

6 (1) "personal identifying information" means
7 information that alone or in conjunction with other information
8 identifies a person, including the person's name, address,
9 telephone number, driver's license number, social security
10 number, ~~date of birth, biometric data,~~ place of employment,
11 [~~maiden name of the person's mother~~] mother's maiden name,
12 demand deposit account number, checking or savings account
13 number, credit card or debit card number, personal
14 identification number, electronic identification codes,
15 automated or electronic signatures, passwords or any other
16 numbers or information that can be used to access a person's
17 financial resources, obtain identification, act as
18 identification or obtain goods or services; and

19 (2) "biometric data" means data, such as
20 finger, voice, retina and iris prints, that capture, represent
21 or enable the reproduction of unique physical attributes of a
22 person.

23 C. Whoever commits theft of identity is guilty of a
24 [~~misdemeanor~~] fourth degree felony.

25 D. Prosecution pursuant to this section shall not

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1 prevent prosecution pursuant to any other provision of the law
2 when the conduct also constitutes a violation of that other
3 provision.

4 E. In a prosecution brought pursuant to this
5 section, the theft of identity shall be considered to have been
6 committed in the county where the person whose identifying
7 information was appropriated resided at the time of the
8 offense, or in which any part of the offense took place,
9 regardless of whether the defendant was ever actually present
10 in the county.

11 F. A person found guilty of theft of identity
12 shall, in addition to any other punishment, be ordered to make
13 restitution for any financial loss sustained by a person
14 injured as the direct result of the theft of identity. In
15 addition to out-of-pocket costs, restitution may include
16 payment for costs, including attorney fees, incurred by that
17 person in clearing his credit history or credit rating or costs
18 incurred in connection with a civil or administrative
19 proceeding to satisfy a debt, lien, judgment or other
20 obligation of that person arising as a result of the theft of
21 identity.

22 G. The sentencing court shall issue written
23 findings of fact and may issue orders as are necessary to
24 correct ~~[a public record]~~ public records and errors in credit
25 reports or identifying information that contains false

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1 information as a result of the theft of identity."

2 Section 2. A new section of Chapter 29 NMSA 1978 is
3 enacted to read:

4 "[NEW MATERIAL] IDENTITY THEFT REPORTS.--When a law
5 enforcement officer interviews an alleged identity theft
6 victim, the law enforcement officer shall make a written report
7 of the information provided by the victim and by witnesses on
8 appropriate forms provided by the attorney general. A copy of
9 the police report shall be filed with the office of the
10 attorney general."

11 Section 3. [NEW MATERIAL] IDENTITY THEFT--EXPUNGEMENT
12 FROM POLICE AND COURT RECORDS.--

13 A. A person whose name or other identifying
14 information was used, without consent or authorization, by
15 another person who was charged or arrested using such name or
16 identification may, with notice to the prosecutor, file a
17 petition in district court requesting a determination of
18 factual innocence. If the court finds that there is no
19 reasonable cause to believe that the person committed the
20 offense with which the person's identity has been associated,
21 the court shall issue an order certifying the person's factual
22 innocence.

23 B. When a court finds a person factually innocent
24 pursuant to Subsection A of this section, the court shall order
25 that the person's name and other identifying information

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1 contained in the court records be removed and the records
2 labeled to show that the information is not accurate and does
3 not reflect the perpetrator's identity due to identity theft.
4 The court shall also order expungement of the arrest
5 information pursuant to Section 29-3-8.1 NMSA 1978.

6 C. A court may at any time vacate the determination
7 of factual innocence if the petition, or information submitted
8 in support of the petition, contains a material
9 misrepresentation or fraud. If the court vacates the
10 determination, an order shall be entered rescinding any orders
11 made pursuant to Subsection B of this section.

12 Section 4. [NEW MATERIAL] IDENTITY THEFT PASSPORT--
13 DATABASE.--

14 A. The attorney general, in cooperation with the
15 department of public safety, shall issue an identity theft
16 passport to a person who claims to be a victim of identity
17 theft pursuant to Section 30-16-24.1 NMSA 1978, and who
18 provides to the attorney general:

19 (1) a certified copy of a court order obtained
20 pursuant to Section 3 of this act, if applicable;

21 (2) a full set of fingerprints;

22 (3) a driver's license or other government-
23 issued identification or record; and

24 (4) other information as required by the
25 attorney general.

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1 B. An identity theft passport shall state the basis
2 for its issuance and shall be accepted as evidence of identity
3 by law enforcement officers and others who may challenge the
4 person's identity.

5 C. When an identity theft passport is issued, the
6 attorney general shall transmit a record of the issuance to the
7 motor vehicle division of the taxation and revenue department.
8 The motor vehicle division shall note on the person's driver
9 record that an identity theft passport has been issued.

10 D. The attorney general shall maintain a database
11 of identity theft victims who have reported to a law
12 enforcement agency or have been issued an identity theft
13 passport. The attorney general may provide access to the
14 database to criminal justice agencies and to those who have
15 been issued an identity theft passport and their authorized
16 representatives.

17 E. The attorney general shall keep on file each
18 application for an identity theft passport and each police
19 report of identity theft submitted by a law enforcement agency.

20 F. The attorney general shall prepare and
21 distribute to local law enforcement agencies and to the general
22 public an information packet that includes information on how
23 to prevent and stop identity theft.

24 Section 5. [NEW MATERIAL] IDENTITY THEFT--CREDIT
25 REPORTS.--

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1 A. If a person submits a copy of a police report
2 indicating identity theft or an identity theft passport to a
3 consumer reporting agency, the agency shall within thirty days
4 block the reporting of any information that the person alleges
5 appears on his credit report as a result of a violation of
6 Section 30-16-24.1 NMSA 1978.

7 B. A consumer reporting agency may decline to block
8 or may rescind a block of a person's information if, in the
9 exercise of good faith and judgment, the consumer reporting
10 agency believes that:

11 (1) the information was blocked due to a
12 misrepresentation of a material fact by the person;

13 (2) the information was blocked due to fraud,
14 in which the person participated or of which the person had
15 knowledge, and which may for purposes of this section be
16 demonstrated by circumstantial evidence;

17 (3) the person agrees that portions of the
18 blocked information or all of it were blocked in error;

19 (4) the person knowingly obtained or should
20 have known that he obtained possession of goods, services or
21 money as a result of the blocked transaction or transactions;
22 or

23 (5) the consumer reporting agency, in the
24 exercise of good faith and reasonable judgment, has substantial
25 reason based on specific, verifiable facts to doubt the

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1 authenticity of the alleged violation of Section 30-16-24.1
2 NMSA 1978.

3 C. If blocked information is unblocked pursuant to
4 this section, the person shall be notified in the same manner
5 as consumers are notified of the reinsertion of information
6 pursuant to the federal Fair Credit Reporting Act, 15 U.S.C.
7 1681i, as amended, or within five business days, whichever is
8 later.

9 D. A consumer reporting agency shall delete from a
10 person's credit report inquiries for credit reports based upon
11 credit requests that the consumer reporting agency verifies
12 were initiated as a result of a violation of Section 30-16-24.1
13 NMSA 1978.

14 E. As used in this section:

15 (1) "consumer reporting agency" means a person
16 that, for monetary fees, dues or on a cooperative nonprofit
17 basis, regularly engages in the practice of assembling or
18 evaluating consumer credit information or other information on
19 consumers for the purpose of furnishing consumer reports to
20 third parties; and

21 (2) "consumer report" or "credit report" means
22 a written, oral or other communication of information by a
23 consumer reporting agency bearing on a consumer's credit
24 worthiness, credit standing, credit capacity, character,
25 general reputation, personal characteristics or mode of living

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1 that is used or expected to be used or collected for the
2 purpose of serving as a factor in establishing the consumer's
3 eligibility for credit, insurance, investment, benefit,
4 employment or other purpose as defined by the Fair Credit
5 Reporting Act, 15 U.S.C. 1681a.

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